



PUBLIC NOTICE

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DA 13-2392

Released: December 13, 2013

MEDIA BUREAU SEEKS COMMENT ON APPLICATION OF THE IP CLOSED CAPTIONING RULES TO VIDEO CLIPS

MB Docket No. 11-154

Comment Date: January 27, 2014

Reply Comment Date: February 26, 2014

Through this Public Notice, the Media Bureau seeks updated information on the closed captioning of video clips delivered by Internet protocol ("IP"), including the extent to which industry has voluntarily captioned IP-delivered video clips.¹

In the *IP Closed Captioning Order*, pursuant to the Twenty-First Century Communications and Video Accessibility Act of 2010 ("CVAA"),² the Commission imposed closed captioning requirements on the owners, providers, and distributors of IP-delivered video programming. The Commission determined that the IP closed captioning rules initially should apply to full-length programming and not to video clips, but it also stated its belief that Congress intended "to leave open the extent to which [video clips] should be covered under this section at some point in the future."³ Specifically, the Commission noted that statements in the legislative history of the CVAA that Congress "intends, *at this time*, for the regulations to apply to full-length programming and not to video clips or outtakes,"⁴ suggested that Congress only intended to exclude video clips initially.⁵ Given Congress's intent to "update the communications laws to help ensure that individuals with disabilities are able to . . . better access video

¹ See *Closed Captioning of Internet Protocol-Delivered Video Programming: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, Order on Reconsideration and Further Notice of Proposed Rulemaking, 28 FCC Rcd 8785, 8803-04, ¶ 30 (2013) ("*IP Closed Captioning Order on Recon and FNPRM*").

² Pub. L. No. 111-260, 124 Stat. 2751 (2010). See also Amendment of the Twenty-First Century Communications and Video Accessibility Act of 2010, Pub. L. No. 111-265, 124 Stat. 2795 (2010) (making technical corrections to the CVAA); *Closed Captioning of Internet Protocol-Delivered Video Programming: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, Report and Order, 27 FCC Rcd 787 (2012) ("*IP Closed Captioning Order*").

³ *IP Closed Captioning Order*, 27 FCC Rcd at 816, 818, ¶¶ 44, 48. "Full-length programming" is defined as video programming that appears on television and is distributed to end users, substantially in its entirety, via IP. *Id.* at 816, ¶ 44. "Video clips" are defined as excerpts of full-length programming. *Id.* at 816, ¶ 45.

⁴ S. Rep. No. 111-386, 111th Cong., 2d Sess. at 13-14 (2010) ("Senate Committee Report") (emphasis added); H.R. Rep. No. 111-563, 111th Cong., 2d Sess. at 30 (2010) ("House Committee Report") (emphasis added).

⁵ *IP Closed Captioning Order*, 27 FCC Rcd at 817-18, ¶ 48. The authors of the CVAA have expressed their support for the Commission "reconsidering its decision to exempt video clips from the IP closed captioning rules." See Letter from Sen. Mark Pryor and Sen. Edward J. Markey to the Honorable Tom Wheeler, Chairman, FCC (Dec. 6, 2013).

programming,”⁶ the Commission stated that it may later determine that this intent is best served by requiring captioning of IP-delivered video clips.⁷ Although not required by the *IP Closed Captioning Order*, the Commission also encouraged video programming owners, providers, and distributors to provide closed captions for IP-delivered video clips, especially news clips.⁸ The Commission stated that if it finds that consumers who are deaf or hard of hearing are denied access to critical areas of programming, such as news, it may reconsider the need for a requirement to provide closed captioning on video clips to achieve Congressional intent.⁹

A coalition of consumer groups filed a petition for reconsideration of this issue.¹⁰ Shortly thereafter, in support of their request, the consumer groups submitted a report on the state of closed captioning of IP-delivered video programming, in which they asserted a lack of captioning of video clips.¹¹ Consumers expressed particular concern about the unavailability of captioned news clips.¹² In an order addressing other petitions for reconsideration of the IP closed captioning rules, the Commission deferred a final decision on whether to reconsider the issue of requiring closed captioning of video clips, noting that since such live and near-live programming only became subject to the IP closed captioning requirements less than three months before the *IP Closed Captioning Order on Recon and FNPRM* was adopted, the Commission expected the volume of captioned IP-delivered news clips to increase.¹³ Accordingly, the Commission stated that it would “monitor industry actions with respect to captioning of video clips” and directed the Media Bureau to issue a Public Notice within six months of the release date of the *IP Closed Captioning Order on Recon and FNPRM*, seeking comment on the industry’s progress in captioning IP-delivered video clips.¹⁴ The Commission stated that, “[i]f the record developed in response to the Public Notice demonstrates that consumers are denied access to critical areas of video programming due to lack of captioning of IP-delivered video clips, [the Commission] may reconsider [its] decision on this issue.”¹⁵

We now invite comment on the current state of captioning of IP-delivered video clips. What portion of IP-delivered video clips generally, and IP-delivered news clips specifically, are captioned? Has the availability of captioned versions of such clips been increasing? What is the quality of the captioning on IP-delivered video clips?

We ask whether, as a legal and/or policy matter, the Commission should require captioning of IP-delivered video clips. Commenters should explain how their positions are consistent with the CVAA, its legislative history, and the intent of Congress to provide video programming access to people with disabilities. What are the potential costs and benefits of requiring captioning of IP-delivered video clips?

⁶ Senate Committee Report at 1; House Committee Report at 19.

⁷ *IP Closed Captioning Order*, 27 FCC Rcd at 818, ¶ 48.

⁸ *Id.* at 817-818, ¶¶ 46, 48.

⁹ *Id.* at 818, ¶ 48.

¹⁰ Consumer Groups, Petition for Reconsideration of the Commission’s Report and Order, at 1-17 (filed Apr. 27, 2012).

¹¹ Consumer Groups and California Coalition of Agencies Serving the Deaf and Hard of Hearing, Report on the State of Closed Captioning of Internet Protocol-Delivered Video Programming, MB Docket No. 11-154, at ii-iii, 5-13, 18-20 (May 16, 2013).

¹² *See id.* at ii-iii, 20.

¹³ *IP Closed Captioning Order on Recon and FNPRM*, 28 FCC Rcd at 8803-04, ¶ 30.

¹⁴ *Id.* at 8804, ¶ 30.

¹⁵ *Id.*

How have consumers been affected by the absence of closed captioning on IP-delivered video clips, particularly news clips? Commenters should explain what exact steps must be taken in order to caption IP-delivered video clips. To the extent that some entities have already captioned these clips, what technical challenges, if any, had to be addressed? How does the captioning of IP-delivered video clips differ from the captioning of full-length IP-delivered video programming? Similarly, what are the differences between captioning live or near-live IP-delivered video clips, such as news clips, and prerecorded IP-delivered video clips? If the Commission imposes closed captioning obligations for IP-delivered video clips, should the requirements apply to all video clips, or only to a subset of such clips? If only to a subset, what subsets would be most appropriate and what would be the rationale for excluding others?

We invite comment on any additional issues relevant to the Commission's determination of whether it should require closed captioning of IP-delivered video clips.

Interested parties may file comments and reply comments on or before the dates indicated on the first page of this document.¹⁶ Comments may be filed using the Commission's Electronic Comment Filing System ("ECFS"). See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://fjallfoss.fcc.gov/ecfs2/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington, DC 20554.

Comments, reply comments, and *ex parte* submissions will be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, S.W., CY-A257, Washington, D.C., 20554. These documents will also be available via ECFS. Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat.

¹⁶ The Notice of Proposed Rulemaking in this proceeding included an Initial Regulatory Flexibility Analysis (IRFA) pursuant to 5 U.S.C. § 603, exploring the potential impact of the Commission's proposals on small entities. *Closed Captioning of Internet Protocol-Delivered Video Programming: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, Notice of Proposed Rulemaking, 26 FCC Rcd 13734, 13774-87 (2011).

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This proceeding shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.¹⁷ Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.*, .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

For additional information on this proceeding, contact Diana Sokolow, Diana.Sokolow@fcc.gov, of the Media Bureau, Policy Division, (202) 418-2120. Press contact: Janice Wise, Janice.Wise@fcc.gov (202- 418-8165).

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¹⁷ 47 C.F.R. §§ 1.1200 *et seq.*